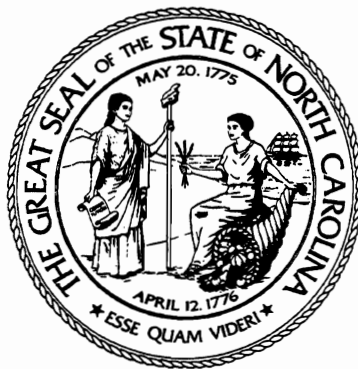


JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS



*Interim Report to the
2005 General Assembly
of North Carolina*

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STATE OF NORTH CAROLINA

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS



February 9, 2005

TO THE MEMBERS OF THE 2005 GENERAL ASSEMBLY:

Attached for your consideration is the interim report to the 2005 General Assembly. This report was prepared by the Joint Select Committee on Electronic Voting Systems pursuant to G.S. 120-70.81.

Respectfully submitted,

A handwritten signature in cursive script, reading "Austin Allran".

Senator Austin Allran
Cochair

A handwritten signature in cursive script, reading "Verla Insko".

Representative Verla Insko
Cochair

A handwritten signature in cursive script, reading "Elle Kinnaid".

Senator Elle Kinnaid
Cochair

A handwritten signature in cursive script, reading "Susan T. Adams".

Ms Susan T. Adams
Cochair

JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

2003-2005

COMMITTEE MEMBERSHIP

Senate Appointees

Senator Austin Allran, Cochair
Hickory, NC

Senator Ellie Kinnaird, Cochair
Carrboro, NC

Mr. David Allen
Computer Systems Engineer and Publisher.
High Point, NC

Mr. Michael Ashe
Election Director of Durham County
Durham, NC

Honorable Barry Jacobs
Orange County Commissioner
Hillsborough, NC

Mr. Warren Murphy
Co-Chair of Common Cause
Raleigh, NC

House Appointees

Representative Verla Insko, Cochair
Chapel Hill, NC

Ms. Susan T. Adams, Cochair
Secretary, Moore County Board of Elections
Pinehurst, NC

Representative Jean Rouse Preston
Emerald Isle, NC

Mr. Robert B. Cordle
Member, State Board of Elections
Charlotte, NC

Mr. John Esparza
Computer Security Specialist
Cary, NC

Mr. Roger W. Knight
Attorney
Raleigh, NC

Joint House-Senate Appointee

Mr. Gary O. Bartlett
Executive Director, State Board of Elections

COMMITTEE STAFF

Bill Gilkeson Gerry Cohen Erika Churchill Brenda Carter Marilyn Chism Peter Capriglione

Pam Evans, Committee Assistant

Angie Whitener, Committee Assistant

COMMITTEE FINDINGS AND RECOMMENDATIONS

I. Restoring Public Confidence in the Election System

The Committee finds that, despite capable, dedicated election officials, the election system has malfunctioned just often enough and recently enough to create doubt in the public mind that the system is healthy. Those malfunctions, together with questions raised by critics of electronic voting about what problems are possible, threaten to leave the State with an election system that does not have the public's confidence.

The Committee heard presentations from county election officials describing the problems that occurred in the 2004 election. The election board chair of Carteret County, where 4,438 votes were lost on an electronic voting system, said the nearest computer support person for his system was 3,000 miles away. The Committee also heard testimony from computer specialists who asserted that computer-based voting systems are subject to errors and manipulation on a magnitude beyond anything possible with paper ballots. (The Committee was reminded that paper ballots have their own long history of manipulation.) The Committee was told that since computer source code is proprietary, no one but the vendor can know how the system operates. The State Election Director, Gary Bartlett, recommended that the acquisition and support of voting systems move toward greater centralization.

As a result of its meetings, the Committee makes the following findings and recommendations to the 2005 General Assembly:

- **Paper Ballots**

The Committee finds that the critics of pure direct record electronic voting system -- "black box voting", as they call it -- have raised enough legitimate questions and found resonance with a large enough share of the public, that a requirement that all voting systems be reducable to paper is a necessity.

The Committee recommends that any voting system must generate a paper form of the ballot. The voter would always be given an opportunity to review and verify the paper ballot before casting it. Though with optical scan and direct record electronic (DRE) voting systems, the electronic or mechanical means would be the primary means of counting, a hand-to-eye sample count of the paper would be required in every county as a way of post-testing the accuracy of the count. If a discrepancy appeared that was significant in a race, a full hand-to-eye count of all the ballots in that race would be conducted. The right to a hand-to-eye recount would also be expanded, giving a candidate entitled to a recount under current law the right to demand a sample hand-to-eye recount (if the first recount was not hand-to-eye) in 3% of the precincts in each county. If that sampling indicated a potential reversal of results, there would be a hand-to-eye recount in the entire jurisdiction in which the election was held. *(See Proposal 1.)*

- **Need for Uniformity, Quality Control, and Accountability in Voting System Acquisition and Support.**

applications. They may enter the ballots into the tabulator, but may not print a totals readout until election day, since doing so would reveal the results. **(See Proposal 3)**

- **Need for Experiment in Convenient and More Reliable Voting**

The Committee finds that the system of early voting, in which almost a third of North Carolina's voters participated in 2004, has the possibility of solving a number of problems. Early voting sites can be outfitted with online access to all the voter registration data in the State, and they can be equipped with all the ballots with which anyone in the county can vote. Early voting sites can be staffed with the best available election officials. Because anyone in a county may vote at any site, voters may vote at a site convenient to their place of work as well as one close to their home. Voters who have moved and are uncertain of the right precinct polling place can vote at an early voting site while updating their records. The success of early voting suggests that it might be used on election day.

The Committee recommends that the State Board of Elections conduct, during 2005 and 2006, a pilot program in 10 diverse counties allowing the process of early voting to continue through election day. Larimer County, Colorado, where this practice has been tried, calls the sites used in this practice "voting centers." The number of traditional polling places open on election day would be reduced or eliminated. As part of the pilot, the State Board would determine which early votes or voting center ballots need, for irregularity-prevention purposes, to be tagged with the voter's identity. Current law requires this tagging in early voting. The State Board should report on its pilot to the 2007 General Assembly. **(See Proposal 4)**

- **Need for Dealing with the Consequences of Voting System Problems**

The Committee finds that the State Board of Elections needs the tools to remedy the consequences of voting system failures when election results are close. The number of lost votes in Carteret County exceeded the apparent victory margin in a 2004 statewide race. The State Board of Elections felt that it did not have the tools to remedy the situation. A majority of the board interpreted the "new election" statute to mean that allowing the 4,438 whose votes were lost to recast those votes would be a "new election." That statute said a new election must be conducted in the entire jurisdiction of the original election. And the State Board could not muster the required four out of five votes required to call a new election.

The Committee recommends (upon the recommendation of State Election Director Gary Bartlett) that the State Board may authorize a county board to allow a known group of voters whose votes were lost irretrievably to recast those votes. It would not be deemed a "new election" and would not require another jurisdiction-wide vote. **(See Proposal 5.)**

- **Need for Ethics Code for Election Boards and Staff.**

The Committee finds that, whatever the reality, the appearance exists in some eyes of election boards and their staff having contacts with vendors that raise questions about

COMMITTEE PROCEEDINGS

The Joint Legislative Education Oversight Committee held seven meetings.

Agenda

10 a.m. Monday, December 13, 2004
Room 643, Legislative Office Building, Raleigh NC

Call to Order:

Rep. Verla Insko

Introductory Remarks by Co-Chairs:

Sen. Ellie Kinnaird Rep. Verla Insko Sen. Austin Allran Ms. Susan Adams

Statements by Committee Members of Their Goals and Expectations

Background on Federal and State Law concerning Voting Equipment:

Committee Staff

Review of Current Array of Voting Systems in North Carolina, Problems That Have Occurred, and Potential Solutions:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections, with assistance from State and county election boards members and staff.

Explanatory Presentation Concerning Electronic Voting Technology:

Mr. Justin Moore, Duke University Department of Computer Science

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 7, 2005
Room 643, Legislative Office Building, Raleigh NC**

Call to Order:

Sen. Austin Allran

Approval of Minutes

Presentation on Auditability and Standards for Electronic Voting and Tabulation Equipment:

Dr. Rebecca Mercuri, Fellow, Radcliffe Institute for Advanced Study, Harvard University

National Overview of the Voting Systems Business and Government Response to Voting System Issues:

Mr. Doug Chapin, Director of electionline.org

Presentation on Security of Electronic Voting Systems:

Mr. Chuck Herrin, Information Technology Auditor and Professional Hacker

-- Break for Lunch --

Proposals for Better Voting Systems in North Carolina:

Mr. Gary O. Bartlett, Executive Director of State Board of Elections

Committee Discussion

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Agenda

**10 a.m. Friday, January 21, 2005
Room 544, Legislative Office Building, Raleigh NC**

Call to Order:

- Rep. Verla Insko, Co-Chair

Approval of Minutes

Presentations about Electronic Voting and Related Matters:

- Mr. David Hood, Member of Catawba County Board of Elections
- Mr. Glenn Newkirk, President of InfoSENTRY Services Inc. and former Information System Director of NC General Assembly

CoChairs' Proposed Recommendations to 2005 General Assembly:

- **Proposal 1 – Public Confidence in Elections**
- **Proposal 2 – Public Employee Pollworkers**
- **Proposal 3 – Early Prep for Absentee Count**
- **Proposal 4 – Any-Precinct Voting Pilot**
- **Proposal 5 – Out-of-Precinct Provisionals**
- **Proposal 6 – Recasting Lost Votes**
- **Proposal 7 – County Elections Employees/State Employees**

Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Joint Select Committee on Electronic Voting Systems

Agenda

Final Meeting During Legislative Session

**9:30 a.m. Wednesday, February 9, 2005
Room 1228, State Legislative Building, Raleigh NC**

9:30 Call to Order:

- Sen. Austin Allran, Co-Chair

9:40 – 10:10 Presentation by Dr. Ted Selker, Associate Professor, Massachusetts Institute of Technology, and Co-Director of CalTech/MIT Voting Technology Project.

10:10 – 10:30 Questions of Dr. Selker

10:30 – 11:00 Amendments to Main Bill (3 potential amendments known)

11:00 – 11:15 Discussion and Vote on Main Bill and Interim Report

11:15 Adjournment

Committee Website: http://www.ncleg.net/committees/jointselectcomm_/

Summaries of Proposed Bills

Proposal One – Public Confidence in Elections. Proposal One makes several changes designed to restore public confidence in the election process.

Section 1 – Permitted Voting Systems, Paper Ballots, and Counting. Lists the three voting systems used in NC: paper ballots counted by hand, Optical scan, and direct record electronic (DRE). Requires by 1-1-06 that every voting system must generate a ballot. Directs that, with optical scan and DRE systems, subject to sample hand counts and mandatory hand recounts, the boards of elections shall rely on an electronic or mechanical count. If there is a discrepancy between and electronic or mechanical counts and hand-to-eye paper counts, the hand-to-eye prevails unless it is reasonable to conclude it is not the true count.

Section 2 -- Requirements for Voting System Vendors. Effective with any upgrade or new voting system purchased beginning 7-1-05, vendors of voting systems in NC must:

- Escrow their relevant source code and make it available for review by the State Board of Elections, the NC Office of Information Technology, and the Chair (or designee) of any legally recognized political party in NC.
- Keep the escrowed source code up to date, and must swear that it is the code used in operating voting systems.
- Maintain an active office in NC.
- Notify the State Board of any known defect in a voting system used in NC, even if the defect shows up outside the State.

Fraudulent and willful violation of any of the requirements, or substitution of software into a voting system without notifying the State Board, is a Class I felony. Other violations are a civil penalty.

Section 3 -- State Board of Elections' Role in Purchasing. Effective with any upgrade or new voting system purchased beginning 7-1-05, the State Board of Elections is directed to develop a Request for Proposal. The vendor would have to agree to:

- Post a bond or letter of credit to cover damages from defects in its voting system, including the cost of a new election.
- State a statewide price for each unit of the equipment.

The State Board would be given the duties of monitoring voting system contracts, and of providing training and support to counties in their use. The goal would be that, within each type of voting system, all vendors would provide the same equipment.

New voting systems would have to allow reporting of absentee and early voting returns by precinct. The requirement that all counties must report such returns by precinct would be moved from 2006 to 2008.

Section 4 -- County Commissioners' Role in Purchasing. Effective 7-1-05, county commissioners would continue to purchase voting equipment. But because of the State Board's new duties, counties would be exempt from the purchasing rules that normally apply to local governments.

Section 5 -- County Board of Elections' Role in Purchasing. Effective 7-1-05, the county board of elections would have the duty to recommend to the county commissioners which type of voting system the county should purchase. Currently, the county chooses from a list of types, makes, and models approved by the State Board.

this would be done accurately and without compromising the secrecy of the results before election day. Effective when bill becomes law.

Proposal Four – Any Precinct Voting Pilot. Proposal Four would require the State Board of Elections to select up to 10 counties in which to conduct a pilot program during 2005 and 2006 of continuing one-stop (early) voting through election day as the principal method of voting. That would mean any voter in the county could vote at any one of the sites, and the number of traditional precinct polling places open on election day would either be reduced or eliminated. Where technically feasible, however, returns would be reported by precinct. The State Board would report its findings and recommendations to 2006 and 2007 sessions of the General Assembly.

Proposal Five – Recasting Lost Votes. In 2004 the early votes of 4,438 people in Carteret County were lost beyond retrieval because a voting system was put on the wrong setting and would not record more than a certain number. The 4,438 votes were greater than the apparent margin of victory in the statewide race for Commissioner of Agriculture. The State Board of Elections was asked to allow the 4,438 to recast (or complete) the votes they cast that were lost. A majority of the State Board decided that doing so would constitute ordering a "new election," and would violate the provision in the new election statute that says all new elections must be in the entire jurisdiction in which the original election was held. Proposal Five would permit the State Board of Elections to allow a county board to permit a known group of voters whose votes were lost beyond retrieval to recast those votes. The bill would specify that the procedure would not be a "new election." Effective when bill becomes law.

PROPOSAL 1 – Public Confidence in Elections

A BILL TO BE ENTITLED

AN ACT TO RESTORE PUBLIC CONFIDENCE IN THE ELECTION PROCESS BY REQUIRING THAT ALL VOTING SYSTEMS PERMIT ALL VOTERS TO VERIFY THEIR VOTES ON PAPER; BY PROVIDING STATUTORY GUIDANCE AS TO COUNTING; BY PROVIDING CHECKS ON ELECTRONIC VOTING SYSTEM VENDORS INCLUDING MULTI-PARTY REVIEW OF SOURCE CODE, BY AUTHORIZING THE STATE BOARD OF ELECTIONS TO PROMOTE UNIFORMITY IN VOTING SYSTEMS BY STANDARDIZING PURCHASING OF VOTING SYSTEMS IN NORTH CAROLINA, BY EMPOWERING THE STATE BOARD OF ELECTIONS TO CONTROL THE TESTING AND SUPPORT OF VOTING SYSTEMS; BY REQUIRING POST-ELECTION TESTING OF VOTING SYSTEMS INCLUDING A PAPER SAMPLE-COUNT; BY EXPANDING THE RIGHT TO A HAND-TO-EYE RECOUNT OF PAPER BALLOTS; BY APPROPRIATING STATE FUNDS FOR VOTING SYSTEM ACQUISITION TO PREVENT IMPOSING UNFUNDED MANDATES UPON COUNTIES; AND BY APPROPRIATING FUNDS TO THE STATE BOARD OF ELECTIONS TO IMPLEMENT ITS EXPANDED DUTIES WITH REGARD TO VOTING SYSTEMS.

The General Assembly of North Carolina enacts:

SECTION 1. Effective January 1, 2006, Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-165.9B. Voting systems: permitted voting systems; paper ballot required; counting.

(a) Permitted Voting Systems – The State allows three voting systems: (i) paper ballots; (ii) optical scan; and (iii) direct record electronic (DRE). Paper ballots are inherent to paper ballots and optical scan voting systems. In order to provide a paper ballot in a DRE, each DRE shall generate a paper ballot which can be verified by the voter before the vote is cast.

(b) Counting on Voting Systems. – In counties that use optical scan or DRE voting systems, subject to the sample counts under G.S. 163-182.1 and 163-182.2, and of a hand-to-eye recount under G.S. 163-182.7 and 163-182.7A, a board of elections shall rely in its canvass on the mechanical or electronic count of the vote rather than the full hand-to-eye recount of the paper ballots. In the event of a discrepancy between the electronic or mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count."

SECTION 2.(a) Part 2 of Article 14A of Chapter 163 of the General Statutes is amended by adding a new section to read:

"§ 163-165.9A. Voting systems: requirements for voting systems vendors; penalties.

approved certified voting systems shall be valid in any election or referendum held in any county or municipality. The State Board may, upon request of a local board of elections, authorize the use of a voting system not approved for general use. The use of paper ballots counted by hand is a certified voting system. The State Board shall certify additional voting systems through the use of a request for proposal process. In consultation with the Office of Information Technology Services, the State Board of Elections shall develop the requests for proposal subject to the provisions of this Chapter and other applicable State laws. The request for proposal shall require at least all of the following:

- (1) That the vendor must post a bond or letter of credit to cover damages resulting from defects in the voting. Damages include the cost of a new election.
- (2) That the voting system comply with all federal requirements for voting systems.
- (3) That the voting system have the capacity to include in precinct returns the votes cast by voters outside of the voter's precinct.
- (4) For all voting systems utilizing electronic means, accessibility to review all source code relevant to the recording or counting of votes by the State Board of Elections; the Office of Information Technology Services; the state chairs, or one designee of each chair, of each political party recognized under G.S. 163-96; and the purchasing county board of elections.
- (5) That the vendor state a statewide uniform price for each unit of the equipment.

The State Board shall have as its goal in its request for proposals and its negotiations with vendors the eventual establishment of a uniformity of features within type throughout the State such that each optical scan voting system shall have substantially identical features to all other optical scan voting systems and each direct record electronic voting system shall have substantially identical features to all other direct record electronic systems. A uniformity of features within type does not necessarily mean there will be only one vendor per type.

(b) Decertification of voting systems. The State Board may also, upon notice and hearing, disapprove types, makes, and models of voting systems. Upon disapproving a type, make, or model of voting system, the State Board shall determine the process by which the disapproved system is discontinued in any county. ~~If a county makes a showing that discontinuance would impose a financial hardship upon it, the county shall be given up to four years from the time of State Board disapproval to replace the system. A county may appeal a decision by the State Board concerning discontinuance of a voting system to the superior court in that county or to the Superior Court of Wake County. The county has 30 days from the time of the State Board's decision on discontinuance to make that appeal.~~

the Election Assistance Commission, its Standards Board, its Board of Advisors, or the Technical Guidelines Development Committee as established in Title II of the Help America Vote Act of 2002 with regard to any action or investigation the State Board may take concerning a voting system. The State Board may use, for the purposes of voting system certification, laboratories accredited by the Election Assistance Commission under the provisions of section 231(2) of the Help America Vote Act of 2002.

SECTION 3.(d) In order to carry forward the second of two amendments that would have been made by Section 11 of S.L. 2003-226 to the old version of G.S. 163-165.7, effective January 1, 2006, G.S. 163-165.7(d) as rewritten by subsection (a) of this section is amended by adding the following new subdivision:

"(9) Compliance with section 301 of the Help America Vote Act of 2002."

SECTION 3.(e) G.S. 163-132.5G reads as rewritten:

"§ 163-132.5G. Voting data maintained by precinct.

To the extent that it can do so without compromising the secrecy of an individual's ballot, each county board of elections shall maintain voting data by precinct so that precinct returns for each item on the ballot shall include the votes cast by residents of the precinct who voted by absentee ballot, both mail and one-stop. The county board shall not be required to report absentee voting data by precinct until 60 days after the election. The State Board of Elections shall adopt rules for the enforcement of this section with the goal that all voting data shall be reported by precinct by the ~~2006~~ 2008 election. Those rules shall provide for exemptions where the expense of compliance would place a financial hardship on a ~~county~~ county and shall provide an exemption if the current voting system cannot be programmed to provide such information, but any new voting system acquired after July 1, 2005 must have the ability to provide such information. Those rules shall provide for compliance by 2004 for counties the State Board determines are capable of complying by that year."

SECTION 4. Effective July 1, 2005, G.S. 163-165.8 reads as rewritten:

"§ 163-165.8. Voting systems: powers and duties of board of county commissioners.

The board of county commissioners, with the approval of the county board of elections, may adopt and purchase or lease for reimbursement by the State only a voting system of a type, make, and model ~~approved~~ certified by the State Board of Elections for use in some or all voting places in the county at some or all elections.

The board of county commissioners may decline to adopt and purchase or lease any voting system recommended by the county board of elections but may not adopt and purchase or lease any voting system that has not been approved by the county board of elections. Article 8 of Chapter 143 of the General Statutes does not apply to county boards of commissioners purchasing voting systems certified by the State Board of Elections."

SECTION 5. Effective July 1, 2005, G.S. 163-165.9 reads as rewritten:

"§ 163-165.9. Voting systems: powers and duties of county board of elections.

mechanical count and a hand-to-eye count, the hand-to-eye count shall control, except where it is reasonable to conclude that the hand-to-eye count for whatever reason is not the true count. If the discrepancy between the hand-to-eye count and the mechanical or electronic count is significant, a complete hand-to-eye count shall be conducted.

- (2) ~~provide~~ Provide that if the voter selects votes for more than the number of candidates to be elected or proposals to be approved in a ballot item, the voting system shall do all the following:
- (1)~~a.~~ Notify the voter that the voter has selected more than the correct number of candidates or proposals in the ballot item.
 - (2)~~b.~~ Notify the voter before the vote is accepted and counted of the effect of casting overvotes in the ballot item.
 - (3)~~c.~~ Provide the voter with the opportunity to correct the official ballot before it is accepted and counted."

SECTION 6.(b) G.S. 163-182.2 reads as rewritten:

"§ 163-182.2. Initial counting of official ballots.

(a) The initial counting of official ballots shall be conducted according to the following principles:

- (1) Vote counting at the precinct shall occur immediately after the polls close and shall be continuous until completed.
- (2) Vote counting at the precinct shall be conducted with the participation of precinct officials of all political parties then present. Vote counting at the county board of elections shall be conducted in the presence or under the supervision of board members of all political parties then present.
- (3) Any member of the public wishing to witness the vote count at any level shall be allowed to do so. No witness shall interfere with the orderly counting of the official ballots. Witnesses shall not participate in the official counting of official ballots.
- (4) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.
- (5) Precinct officials shall provide a preliminary report of the vote counting to the county board of elections as quickly as possible. The preliminary report shall be unofficial and has no binding effect upon the official county canvass to follow.

(b) The State Board of Elections shall promulgate rules for the initial counting of official ballots. All election officials shall be governed by those rules. In promulgating those rules, the State Board shall adhere to the following guidelines:

from the sample hand-to-eye paper ballot counts, and from provisional official ballots and shall conduct the canvass.

(c) Canvassing by State Board of Elections. – After each general election, the State Board of Elections shall meet at 11:00 A.M. on the Tuesday three weeks after election day to complete the canvass of votes cast in all ballot items within the jurisdiction of the State Board of Elections and to authenticate the count in every ballot item in the county by determining that the votes have been counted and tabulated correctly. After each primary, the State Board shall fix the date of its canvass meeting. If, by the time of its scheduled canvass meeting, the State Board has not received the county canvasses, the State Board may adjourn for not more than 10 days to secure the missing abstracts. In obtaining them, the State Board is authorized to secure the originals or copies from the appropriate clerks of superior court or county boards of elections, at the expense of the counties."

SECTION 6.(d) This section becomes effective January 1, 2006.

SECTION 7.(a) G.S. 163-182.7 reads as rewritten:

"§ 163-182.7. Ordering recounts.

(a) Discretionary Recounts. – The county board of elections or the State Board of Elections may order a recount when necessary to complete the canvass in an election. The county board may not order a recount where the State Board of Elections has already denied a recount to the petitioner.

(b) Mandatory Recounts for Ballot Items Within the Jurisdiction of the County Board of Elections. – In a ballot item within the jurisdiction of the county board of elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate is not more than one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item not more than one percent (1%) of the votes cast for those two candidates. The demand for a recount must be made in writing and must be received by the county board of elections by 5:00 P.M. on the first day after the canvass. The recount shall be conducted under the supervision of the county board of elections.

(c) Mandatory Recounts for Ballot Items Within the Jurisdiction of the State Board of Elections. – In a ballot item within the jurisdiction of the State Board of Elections, a candidate shall have the right to demand a recount of the votes if the difference between the votes for that candidate and the votes for a prevailing candidate are not more than the following:

- (1) For a nonstatewide ballot item, one percent (1%) of the total votes cast in the ballot item, or in the case of a multiseat ballot item, one percent (1%) of the votes cast for those two candidates.
- (2) For a statewide ballot item, one-half of one percent (0.5%) of the votes cast in the ballot item, ~~or in the case of a multiseat ballot item, one-half of one percent (0.5%) of the votes cast for those two candidates, or~~ 10,000 votes, whichever is less.

SECTION 7.(c) This section becomes effective January 1, 2006.

SECTION 8. To meet the goals of uniformity and equity, and to avoid placing unfunded mandates upon the counties, there is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year (minus Help America Vote Act funds available for the same purpose) for the purpose of reimbursing counties for the lesser of the following expenses:

- (1) Upgrading an existing direct record electronic system used in that county to comply with this act (if it is possible to upgrade)
- (2) Acquiring a direct record electronic system (DRE) that complies with this act
- (3) Acquiring an optical-scan system that complies with this act.

SECTION 9. There is appropriated from the General Fund to the State Board of Elections the sum of _____ for the 2005-2006 fiscal year and the sum of _____ for the 2006-2007 fiscal year for the purpose of meeting its expanded duties under this act with regard to voting systems.

SECTION 9.1. There will be appropriated from the General Fund to the State Board of Elections an appropriate sum in the 2005-2006 fiscal year and the 2006-2007 fiscal year for the purpose of reimbursing counties for costs incurred for conducting post-election verification or any other hand-eye counting or recounting of votes.

SECTION 10. The State Board of Elections shall recommend a model code of ethics for members and employees of county boards of elections and of the State Board of Elections. The code shall address the appropriate relations between those members and staff and vendors who do business or seek to do business with boards of elections in North Carolina. It shall address how to avoid both the reality and the appearance of conflicts of interest and impropriety. The State Board shall report its recommended code to the Joint Select Committee on Electronic Voting Systems no later than 60 days after this act becomes law.

SECTION 11. Sections 8 and 9 of this act become effective July 1, 2005. Except as otherwise provided herein, the remainder of this act is effective when it becomes law.

Proposal 2 – Public Employee Pollworkers

A BILL TO BE ENTITLED

AN ACT TO ALLOW LEAVE TO PUBLIC EMPLOYEES FOR WORKING AS
PRECINCT OFFICIALS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 163 of the General Statutes is amended by adding a new section to read:

"163-41.3. Leave for public employees to work as election officials.

Every employee of the State of North Carolina or of a city, county, school administrative unit, constituent institution of the University of North Carolina, or other political subdivision or public corporation in the State is entitled to up to 24 hours per year of community service leave to serve as a precinct official or as a temporary employee of a county board of elections in a voting site, including a one-stop site as provided in G.S. 163-227.2. As used in this section, 'community service leave' for an employee means absence with full pay in addition to any vacation leave or sick leave to which the employee is already entitled. This section does not entitle an employee to additional community service leave in addition to leave that employee received for the equivalent election service under an equivalent program of the employer."

SECTION 2. This act is effective when it becomes law.

Proposal 3 – Early Prep Absentee

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE COUNTY BOARDS OF ELECTIONS TO TAKE STEPS
EARLIER TO COUNT MAILED ABSENTEE VOTES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-234 reads as rewritten:

"§ 163-234. Counting absentee ballots by county board of elections.

All absentee ballots returned to the county board of elections in the container-return envelopes shall be retained by the board to be counted by the county board of elections as herein provided.

- (1) Only those absentee ballots returned to the county board of elections no later than 5:00 p.m. on the day before election day in a properly executed container-return envelope shall be counted, except to the extent federal law requires otherwise.
- (2) The county board of elections shall meet at 5:00 p.m. on election day in the board office or other public location in the county courthouse for the purpose of counting all absentee ballots except those which have been challenged before 5:00 p.m. on election day. Any elector of the county shall be permitted to attend the meeting and allowed to observe the counting process, provided the elector shall not in any manner interfere with the election officials in the discharge of their duties.

Provided, that the county board of elections is authorized to begin counting absentee ballots between the hours of 2:00 p.m. and 5:00 p.m. upon the adoption of a resolution at least two weeks prior to the election wherein the hour and place of counting absentee ballots shall be stated. A copy of the resolutions shall be published once a week for two weeks prior to the election, in a newspaper having general circulation in the county. Notice may additionally be made on a radio or television station or both, but such notice shall be in addition to the newspaper and other required notice. The count shall be continuous until completed and the members shall not separate or leave the counting place except for unavoidable necessity, except that if the count has been completed prior to the time the polls close, it shall be suspended until that time pending receipt of any additional ballots, and except that one-stop ballots under G.S. 163-227.2 counted electronically shall not be counted until the polls close; provided, however, that if there are outstack ballots in the counting device, they may be counted at the same time as other ballots are counted under this subdivision. The county board of elections may begin putting them in the tabulator at the same time as other ballots are counted under this subdivision if the system for counting one-stop

members and assistants employed to count the absentee ballots shall each sign the pollbook immediately beneath the last absentee voter's name entered therein. The county board of elections shall be responsible for the safekeeping of the pollbook of absentee voters.

- (6) Upon completion of the counting process the board members shall cause the results of the tally to be entered on the absentee abstract prescribed by the State Board of Elections. The abstract shall be signed by the members of the board in attendance and the original mailed immediately to the State Board of Elections. The county board of elections may have a separate count on the abstract for one-stop absentee ballots under G.S. 163-227.2.
- (7) One copy of the absentee abstract shall be retained by the county board of elections and the totals appearing thereon shall be added to the final totals of all votes cast in the county for each office as determined on the official canvass.
- (8) In the event a political party does not have a member of the county board of elections present at the meeting to count absentee ballots due to illness or other cause of the member, the counting shall not commence until the county party chairman of said absent member, or a member of the party's county executive committee, is in attendance. Such person shall act as an official witness to the counting and shall sign the absentee ballot abstract as an "observer."
- (9) The county board of elections shall retain all container-return envelopes and absentee ballots, in a safe place, for at least four months, and longer if any contest is pending concerning the validity of any ballot."

SECTION 2. This act is effective when it becomes law.

Proposal 4 – Any Precinct Voting Pilot

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE STATE BOARD OF ELECTIONS TO CONDUCT A PILOT PROGRAM IN WHICH THE METHODS USED IN ONE-STOP VOTING WOULD CONTINUE THROUGH ELECTION DAY AS THE PREDOMINANT VOTING METHOD.

The General Assembly of North Carolina enacts:

SECTION 1. The State Board of Elections shall select up to 10 counties in which to conduct a pilot program during the 2005 and 2006 elections. In selecting those counties, the State Board shall seek diversity of population size, regional location, and demographic composition. The pilot shall be conducted in a county only with the concurrence of the county board of elections. The pilot program shall consist of continuing one-stop voting as provided in G.S. 163-227.2 through election day as the principal method of voting. In the counties participating in the pilot, the State Board shall adopt a plan in which the following shall occur:

- (1) Any voter properly registered in the county may vote at any one-stop site during the one-stop period established in G.S. 163-227.2 and on election day.
- (2) All one-stop sites used in the pilot counties shall have online connection to the voter registration system so that voters can be checked.
- (3) The number of precinct voting places open on election day shall be reduced or eliminated.
- (4) The larger number of one-stop sites may be open on election day than during the earlier part of the one-stop period.
- (5) Where technically feasible, the election returns shall be reported by precinct, using all the precincts in existence in the county, whether or not the precinct polling place is open.
- (6) The State Board shall determine which ballots must be made retrievable and identifiable to the voter in order to ensure that the vote-count by eligible voters is accurate. If any vote need not be identifiable to the voter, it shall not be made so, notwithstanding G.S. 163-227.2(e1).
- (7) Notwithstanding G.S. 163-227.2(g), the State Board may allow the county board in a pilot county to designate one-stop sites in commercial buildings that are not public buildings.
- (8) In designing the pilot program, the State Board shall ensure fairness to all voters, candidates, and parties, including candidates and voters in counties outside the pilot counties.

SECTION 2. This act is effective when it becomes law. The State Board of Elections shall closely monitor the pilot program and report its findings and

Proposal 5 – Recasting Lost Votes

A BILL TO BE ENTITLED
AN ACT TO AUTHORIZE BOARDS OF ELECTIONS TO ALLOW KNOWN
VOTERS WHOSE VOTES WERE LOST TO RECAST THEIR BALLOTS
DURING A TWO-WEEK PERIOD AFTER THE ELECTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 163-182.12 reads as rewritten:

"§ 163-182.12. Authority of State Board of Elections over protests.

The State Board of Elections may consider protests that were not filed in compliance with G.S. 163-182.9, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over protests pending before a county board, and may take any other action necessary to assure that an election is determined without taint of fraud or ~~corruption~~ corruption and without irregularities that may have changed the result of an election. Where a known group of voters cast votes that were lost beyond retrieval, the State Board of Elections may authorize a county board of elections to allow those voters to recast their ballots during a period of two weeks after the election. If the State Board approves a recasting of votes under this section, any procedures the county board uses to contact those voters and allow them to recast their votes shall be subject to approval by the State Board. Those recast votes shall be added to the returns and included in the canvass. The recasting of those votes shall not be deemed a new election for purposes of G.S. 163-182.13."

SECTION 2. This act is effective when it becomes law.



North Carolina General Assembly

Marc Basnight
President Pro Tem

James B. Black
Speaker

Richard T. Morgan
Speaker

JOINT SELECT COMMITTEE ON ELECTRONIC VOTING SYSTEMS

Section 1. The Joint Select Committee on Electronic Voting Systems (hereinafter "Committee") is established by the President Pro Tempore of the Senate and the Speakers of the House of Representatives pursuant to G.S. 120-19.6, Rule 31 of the Rules of the Senate of the 2003 General Assembly, and Rule 26(a) of the Rules of the House of Representatives of the 2003 General Assembly. This committee is formed to study the issues in S.L. 2004-161, Part XII (Voter Paper Trail Study). Therefore, the Electronic Voting Systems Study Commission in S.L. 2004-161, Part XII will not be appointed.

Section 2. The Committee consists of 13 members as follows:

Sen. Eleanor Kinnaird, Cochair, appointed by the President Pro Tempore of the Senate

Sen. Austin Allran, Cochair, appointed by the President Pro Tempore of the Senate

Ms. Susan Adams, Cochair, appointed by the Speakers of the House of Representatives

Rep. Verla Insko, Cochair, appointed by the Speakers of the House of Representatives

Mr. Michael Ashe, appointed by the President Pro Tempore of the Senate

Mr. Barry Jacobs, appointed by the President Pro Tempore of the Senate

Mr. Warren Murphy, appointed by the President Pro Tempore of the Senate

Mr. David Allen, appointed by the President Pro Tempore of the Senate

Mr. Bob Cordle, appointed by the Speakers of the House of Representatives

Rep. Jean Preston, appointed by the Speakers of the House of Representatives

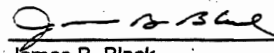
Mr. John Esparza, appointed by the Speakers of the House of Representatives

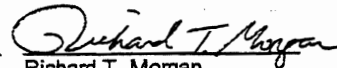
Mr. Roger Knight, appointed by the Speakers of the House of Representatives

upon the written approval of the President Pro Tempore of the Senate and the Speakers of the House of Representatives. All expenses of the Committee shall be paid from the Legislative Services Commission's Reserve for Studies.

Effective this 19th day of November, 2004.


Marc Basnight
President Pro Tempore


James B. Black
Speaker


Richard T. Morgan
Speaker